

SALUTING NIMMER ON COPYRIGHT

by MARIA A. PALLANTE*

Like so many, I came of age as a copyright lawyer reading *Nimmer on Copyright*. Today I have an online subscription to the treatise, but I still keep a set on my bookshelf. Perhaps a little dog-eared, perhaps a little chaotic because of too many sticky notes, the treatise with its deep-blue cover and multiple volumes stands proudly at attention near my desk, ready to be called upon at any moment, no matter the lateness of the hour or the reason at hand. In an office like mine, everyone shares books freely, but I don't like it much when my *Nimmer* volumes go missing.

Whatever Melville *Nimmer* was thinking when he started the treatise, whatever compelled him to trade the life of a practitioner for one of a scribe, the real value of his work, in my opinion, is not the dense and brilliant content, but the sheer scale of his commitment to copyright — the range of issues, the dizzying detail, and the poignant reflections. His love of copyright law comes through in abundance. More importantly, so does his respect for it.

It's fun to wonder whether in 1963, *Nimmer the elder* could have imagined the issues of our twenty-first century — the discussions over distribution and making available, the growth of the public performance right, the rules against circumvention, the international interest in fair use. He certainly knew then that it was only a matter of time before the United States would shed formalities and move to a regime of automatic protection. But would he get a kick out of the nostalgia that many older lawyers now have for the more regimented club rules of the 1909 Act? Would he be amazed that so many young scholars are calling for their return?

What would the *Nimmer of 1963* do with red flag knowledge or orphan works? What protections would he assign to vidders and bloggers? How would he analyze the application of copyright law to the software in cell phones and car radios? What would he think of the development agenda at WIPO? What would he do with section 115?

Thankfully, through *Nimmer the younger*, the treatise goes on, building upon the early days and reminding us that the practice of copyright law isn't only exciting but difficult. It isn't about what we know, or how quickly we can state it in this age of instant public discussion; rather it's a matter of respect. The more one learns about copyright law the more

*Register of Copyrights and Director of the U.S. Copyright Office.

there is to learn. What better symbol is there of this fact than the enduring legacy of *Nimmer on Copyright*?